

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DONALD L. McGUYER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-377
Case No. 77-7749

S.S.A. No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. OAK-09146

The Department appealed from that portion of the administrative law judge's decision which held that the claimant was not required to repay the overpayment.

STATEMENT OF FACTS

On June 25, 1976 the claimant was informed by the plant manager that he was being laid off, but that since he would be recalled within a week not to bother filing for unemployment compensation. On Friday, July 2, 1976 the claimant received information that the layoff would be longer. He unsuccessfully attempted to contact the employer on that date. After he finally received confirmation that the layoff would be longer than one week, the claimant opened a new claim for benefits on July 6, 1976.

The claimant requested that because of the misleading information provided by his employer the claim be backdated to the week beginning June 27, 1976. On July 8, 1976 the Department issued a determination that the claimant's claim became effective July 4, 1976. This determination was never appealed and is now final.

On July 23, 1976 the claimant was paid benefits effective July 4, 1976. The payment included \$104 for the week starting July 4, 1976, despite the fact that

section 1253(d) requires a one-week waiting period for new claims be served before payment may begin. Payment continued for the period through July 31, 1976. On August 2, 1976 the claimant returned to work.

On July 29, 1977 the Department issued a determination that the claimant had been overpaid \$104 and was responsible for repayment of the overpayment. The Department acknowledges that the overpayment is not in any manner the fault of the claimant who fully and accurately reported the facts of his separation. It maintains, nevertheless, that it is not against "equity and good conscience" to require repayment.

At the time of the hearing the claimant, who has a wife and one child, was employed on a full-time basis as a maintenance mechanic at about \$6.50 per hour, a job he had had for over one year. He has perhaps a three-thousand-dollar-equity in his home; owns a 1963 Ford automobile and a 1960 Chevrolet truck; and, more significantly, has more than the amount of overpayment in a savings account. The claimant concedes that he can afford to pay the money back but contends that he should be relieved of that requirement since he was not responsible for the overpayment.

REASONS FOR DECISION

Section 1375 of the Unemployment Insurance Code provides:

"Any person who is overpaid any amount as benefits under this part is liable for the amount overpaid unless:

(a) The overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the recipient, and

(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience."

It is clear that the claimant has met the requirements of subdivision (a) - i.e., there was no fraud, misrepresentation, or fault on the part of the claimant. Thus, the issue before the Board is whether the claimant has also met the requirements of subdivision (b). The precise question to be resolved is, would it be against equity and good conscience to recover the overpayment?

In Gilles v. Department of Human Resources Development, 11 Cal. 3d 313, 113 Cal. Rptr. 374, the California Supreme Court held that a decision on whether the recovery of an overpayment is against equity and good conscience must be based not merely on the notice to the claimant that he may be required to repay the benefits, but consideration must also be given to the cause of the overpayment, whether the claimant received only normal unemployment benefits or some extra duplicative benefits, whether the claimant changed his position in reliance upon the receipt of the benefits, and whether the recovery of the overpayment by imposing extraordinary hardship on the claimant would tend to defeat the objectives of the unemployment insurance program.

The court's decision attached great significance to the financial need of most claimants for benefits and the financial hardship that would be imposed on a claimant if he were required to repay the money for which he had initially been held eligible and which he had already spent on the necessities of life. Additionally, the court emphasized that consideration must be afforded to all of the enumerated factors. Consequently, inquiry must be made into all the aspects delineated in Gilles in deciding whether recovery would be against equity and good conscience.

In the light of these concepts we turn our attention to the case now before us. We are of the view that the mere fact that the overpayment was due to a unilateral Department error does not in and of itself establish that recovery would be against equity and good conscience. It is essential to evaluate other factors involved in this factual matrix.

In Hays v. Finch (1969), 306 F. Supp. 115, which is favorably cited in Gilles, the government in error paid the plaintiff duplicative benefits in a situation where the recipient did not realize that duplicative payments had been made. Though the overpayment was solely the fault of the government, the court did not suspend collection of the overpayment. The matter was remanded for the taking of additional evidence, particularly with regard to the plaintiff's financial circumstances at the times when collection was attempted and the overpayment received.

In the instant case it is evident that the claimant has sufficient assets to repay the overpayment, and its collection would not cause extraordinary hardship and hence would not tend to defeat the purposes of the unemployment insurance program. Furthermore, the claimant did not detrimentally change his position in reliance upon receipt of the \$104. The claimant did not, for instance, incur a financial obligation he would otherwise not have assumed or refrain from taking action that he was entitled to take. Accordingly, we find that recovery of the overpayment would not be against equity and good conscience.

DECISION

The appealed portion of the decision of the administrative law judge is reversed. The claimant is liable for the repayment of the overpayment.

Sacramento, California, February 7, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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